

February 14, 2013

Dear Members of the House Judiciary Committee:

We are very glad that you are hearing HB 236, a measure to eliminate the licensure exemption for private youth treatment programs that are an adjunct ministry of a church.

In 2007, the Montana legislature enacted licensing requirements for private alternative adolescent residential and outdoor programs doing business in Montana. Soon after the bill was signed into law, Disability Rights Montana participated in a series of meetings to draft the rules. Although the process was contentious at times, the PAARP licensing board finalized its rules in September, 2009. These rules have received few criticisms from the programs.

These rules provide for the health and safety of the youth in these programs. We were pleased that the PAARP board included requirements that the programs conduct suicide screening on admission and provide training in suicide prevention to their staff, given that many youth who enter these programs are in crisis. We were also glad that it required staff training on proper restraint if the program uses physical restraint with their participants, as well as prohibitions upon seclusion and the use of medication as restraint. A directory of these rules is available at: <http://www.mtrules.org/gateway/ChapterHome.asp?Chapter=24%2E181>.

The 2007 law exempted programs that are an adjunct ministry of a church from licensure. It is appropriate to eliminate this exemption as the youth in these facilities need the same protections as are provided by the currently regulated facilities.

We recognize that the committee may be concerned about the ability of the state to regulate such religious programs. However, where a state enacts reasonable, facially neutral regulations such as the ones at issue, it can require compliance without unconstitutionally burdening religion. *Employment Division v. Smith*, 494 U.S. 872 (1990). This has been well litigated in the context of the regulation of child care services and such regulations have been consistently upheld. See *North Valley Baptist Church v. McMahon*, 893 F.2d 1139 (9th Cir. 1990), *cert denied*, 496 U.S. 937; *Darrell Dorminey Children's Home v. Georgia Department of Human Resources*, 389 S.E.2d 211 (Georgia 1990); *State ex rel. Pringle v. Heritage Baptist Temple, Inc.*, 693 P.2d 1163 (Kansas 1985); *State, Michigan Department of Social Services v. Emmanuel Baptist Preschool*, 455 N.W.2d 1 (Michigan 1990); *Health Services Division v. Temple Baptist Church*, 814 P.2d 130 (New Mexico 1991).

The regulations passed by the PAARP Board do not impinge upon religious teachings or religious practice, but instead require common sense safety measures necessary to protect the well being of the at-risk youth they serve for extended periods of time in often remote areas. Please support HB 236.

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